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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

12 STEVEN D. MAHONEY,

13 Petitioner,

14 v.

15 PAT GLEBE,

16 Respondent.

No. C09-5251 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING WRIT
OF HABEAS CORPUS AND
DISMISSING PETITION WITH
PREJUDICE

17 This matter comes before the Court on the Report and Recommendation of the Magistrate
18 Judge that Petitioner's request for habeas corpus relief be denied and the petition be dismissed
19 with prejudice.

20 As detailed by the Magistrate Judge, Petitioner failed to exhaust his second claim (trial
21 court's interference with his right to counsel) and fourth claim (denial of right to present insanity
22 defense). Further, Petitioner cannot show cause and actual prejudice to overcome the procedural
23 default. Accordingly, Petitioner's second and fourth claims are procedurally barred.

24 The first claim asserts that Petitioner was entitled to counsel at his mental health
25 evaluation pursuant to RCW 10.77.020(3)1 and that the trial court denied his right to counsel at
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1 the evaluation. Despite Petitioner's statements to the contrary, the evidence indicates that
2 Petitioner was informed of his right to have counsel present at his mental health evaluation and
3 he waived the right. More critically, there is no federal right to have counsel present at a
4 psychological evaluation, regardless of a provision therefor under state law. Because the state
5 court's dismissal of Petitioner's first claim was not contrary to, or an unreasonable application
6 of, clearly established United States Supreme Court precedent, the first claim for habeas relief is
7 denied.
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9 Petitioner's third claim for federal habeas relief is that he was not competent to stand
10 trial. As detailed by the Magistrate Judge, Petitioner presents no facts to create a real and
11 substantial doubt as to his competency other than the conclusory statement that his crime was
12 truly an insane act. The evidence reflects that the trial judge did not deprive Mr. Mahoney of a
13 competency hearing, but that after hearing evidence on the subject, concluded that he was
14 competent to stand trial. The trial judge did not violate Mr. Mahoney's due process right to a fair
15 trial by failing to employ procedures adequate to protect against the trial of an incompetent
16 defendant. Because the state court's dismissal of Petitioner's first claim was not contrary to, or
17 an unreasonable application of, clearly established United States Supreme Court precedent, the
18 third claim for habeas relief is denied.
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20 The Court, having reviewed the petition for writ of habeas corpus, the response, the
21 Report and Recommendation of Magistrate Judge Karen L. Strombom, , and the remaining
22 record, does hereby find and ORDER:
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- 24 (1) The Court adopts the Report and Recommendation;
25 (2) Petitioner's writ of habeas corpus [Dkt. 5] is **DENIED** and this action is
26 **DISMISSED WITH PREJUDICE**; and

1 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
2 Respondent and to the Hon. Karen L. Strombom.

3 DATED this 4th day of January, 2010.
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8 FRANKLIN D. BURGESS
9 UNITED STATES DISTRICT JUDGE
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